

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company:)	
)	
Petition to Determine Adjustments to UNE Loop)	Docket No. 03-0323
Rates Pursuant to Section 13-408 of the)	
Illinois Public Utilities Act)	

STAFF OF THE ILLINOIS COMMERCE COMMISSION'S
RESPONSE TO Z-TEL AND COVAD'S PETITION FOR
INTERLOCUTORY REVIEW AND MOTION FOR CONTINUANCE

The Staff of the Illinois Commerce Commission, (hereafter "the Staff") pursuant to Sections 200.190 and 200.520 of the Rules of Practice before the Illinois Commerce Commission, 83 Ill. Admin. Code 200.190, 200.520, states, in response to Z-Tel's and Covad's Petition for Interlocutory Review of the Administrative Law Judges' May 15, [sic] 2003 Ruling, and Motion for Continuance, as follows:

1. On May 9, 2003, the Illinois General Assembly enacted, and the Governor signed P.A. 93-5, which, *inter alia*, requires the Commission to adjust existing Commission-approved UNE loop rates for SBC Illinois. P.A. 93-5, Section 5, *enrolled as* 220 ILCS 5/13-408. The law further provides that:"[t]he rate adjustments required by subsections (a) and (b) of this Section must be completed within 30 days of the effective date of this Section." P.A. 93-5, Section 5, *enrolled as* 220 ILCS 5/13-408. By its terms, P.A. 93-5 became effective on the date of its enactment. P.A. 93-5, Section 99. Accordingly, the Commission must, by law, determine the adjustments to SBC Illinois' existing UNE loop rates required by Section 13-408 no later than June 9, 2003.

2. SBC filed its *Petition to Determine Adjustments to UNE Loop Rates*, initiating this proceeding, on May 12, 2003.

3. On May 14, 2003, the Administrative Law Judges (“ALJs”) convened a status hearing. See, generally, Tr. at 1-54. There, the ALJs adopted, with modifications, a schedule proposed by the Staff.¹ See Tr. at 1-54. The schedule that the Staff proposed is, without question, significantly foreshortened. However, it results in the Commission entering an Order on or prior to June 9, 2003, as P.A. 93-5 specifically requires.

4. Z-Tel and Covad assert, as is undoubtedly the case, that the schedule does not call for or permit evidentiary hearings, Petition at 3, Motion, ¶2, and that they, specifically, are aggrieved to that extent. Indeed, every party to this proceeding, including the Staff, is subject to this constraint. There is however, no practical way to hold full evidentiary hearings; the General Assembly has specifically directed that this proceeding be complete in 30 days, which began to run May 10. There is simply no time for hearings in this proceeding if the required rate adjustments are to be completed within the time frame mandated by Section 13-408.

5. Z-Tel and Covad further contend that they will be prejudiced if the matter is not continued, inasmuch as they have had little opportunity to conduct discovery. Petition at 3. They propose to remedy this deficiency by, among other things, taking the depositions of a number of SBC employees, a process that appears likely to add, at a bare minimum, four business days to the filing date for initial comments. Motion, ¶7.

¹ To the Staff's knowledge, it was the only party that proposed a schedule.

6. Although Z-Tel and Covad state a number of objections to the schedule, and seek several different kinds of relief from its exigencies, they assiduously *avoid* confronting the major procedural difficulty that this proceeding presents, which is how to complete rate adjustments within 30 days, as the statute explicitly directs. Indeed, Z-Tel and Covad do not propose a schedule of any sort, in either of their two pleadings. This is because they *cannot* propose a schedule that includes depositions and hearings, and still gives the ALJs and the Commission any opportunity to properly consider the matter; there is, very simply, no time for Covad's and Z-Tel's proposal if the Commission is to have any opportunity to deliberate.²

7. Moreover, the Staff notes that much of the information now sought by Covad and Z-Tel was made available to the parties in Docket No. 02-0864. Covad filed its *Petition to Intervene* in that proceeding on January 7, 2003, and Z-Tel filed its on April 16, 2003. Both Z-Tel and Covad were entitled to conduct discovery, and to obtain responses to other parties' discovery. The Staff does not have specific knowledge of whether Z-Tel or Covad conducted discovery in that proceeding. However, both Z-Tel and Covad filed – jointly, with other CLECs – extensive testimony, including considerable testimony regarding fill factors and depreciation. See Testimony of Michael Starkey and Warren Fischer on behalf of Joint CLECs, ICC Docket No. 02-0864 at 98-107, 129 *et seq.*; 141 *et seq.*; 169-210. It seems, therefore, not unreasonable to charge Z-Tel and Covad with knowledge of the information tat they now claim to so utterly lack. Thus, it is

² In this context, the Staff notes that Z-Tel and Covad certainly did not bring their *Motion* and *Petition* anything like as swiftly as they now expect the other parties, ALJs and Commission to act. In fact, they waited five days – out of a thirty-day schedule – to do so.

difficult to see how Z-Tel and Covad are prejudiced to a greater degree than any other party.

8. Finally, Covad and Z-Tel note “Article IX [of the Public Utilities Act] mandates the Commission to hold a hearing to determine whether the rates charged by SBC are just, reasonable, and preferential [sic].” In fact, Section 9-250 of the Public Utilities Act, to which Z-Tel and Covad refer in support of this assertion, mandates no such thing. Section 9-250 provides, in relevant part, that:

Whenever the Commission, **after a hearing had upon its own motion or upon complaint**, shall find that the rates or other charges, or classifications, or any of them, demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, or that the rules, regulations, contracts, or practices or any of them, affecting such rates or other charges, or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in any way in violation of any provisions of law, or that such rates or other charges or classifications are insufficient, the Commission shall determine the just, reasonable or sufficient rates or other charges, classifications, rules, regulations, contracts or practices to be thereafter observed and in force, and shall fix the same by order as hereinafter provided.

220 ILCS 5/9-250 (emphasis added)

Thus, Section 9-250 offers an interested party the opportunity to challenge, by way of complaint, a rate currently in effect. It is not clear to the Staff that this provision does not apply to these rates. Accordingly, Z-Tel and Covad may be in a position to take advantage of such rights as they might have under Section 9-250 – by filing a complaint. This they have not done. Accordingly, they cannot yet resort to Section 9-250.

9. The Staff, accordingly, respectfully requests that Covad and Z-Tel’s Petition for Interlocutory Review and Motion for Continuance both be denied.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully Submitted,

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